

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: : Case No. 14-58250
: :
Nick Glassburn, : Chapter 7
: : Judge C. Kathryn Preston
Debtor. : :

**TRUSTEE'S APPLICATION FOR APPROVAL OF COMPROMISE OF DISPUTE OVER
SALE PROCEEDS OF HATHERTON PLACE PROPERTY**

Larry J. McClatchey, Trustee ("Trustee") requests an order pursuant to 11 U.S.C. § 328(a), Rules 2016 and 9019 of the Federal Rules of Bankruptcy Procedure that authorizes Trustee to settle and compromise a dispute with Reliance Communications, LLC ("Reliance") over distribution of net proceeds from the sale of the real property commonly known as 7804 Hatherton Place, Galena, Ohio 43021 ("Property").

In support of this application, Trustee respectfully represents as follows:

1. Pursuant to order of this Court entered April 21, 2015 [Doc. #62] ("Sale Order") Trustee sold the Property for \$99,900.00, *See, Trustee's Report of Sale* filed June 5, 2015 [Doc. #77]. After commissions, closing costs and transfer fees, the sale proceeds received by the Trustee equal \$78,099.45.

2. Reliance has claimed an interest in the Property by virtue of a certificate of judgment filed June 29, 2012, Delaware County Court of Common Pleas Case No.: 12-CJ-506028, ("Judicial Lien") to secure a judgment against Nick Glassburn, Debtor, in the amount of \$557,143.00.

3. Reliance contends that the Judicial Lien is the first and best lien on the sale proceeds.

4. Trustee contends that the Judicial Lien is subject to possible avoidance pursuant to the provisions of 11 U.S.C. §522(f) upon motion by Debtor.

5. Trustee successfully opposed the homestead exemption claimed by Debtor in the Property, but that encumbrance is preserved for the benefit of the estate pursuant to 11 U.S.C. §551.

6. Trustee and Reliance agreed, subject to Court approval after notice and a hearing, in a *Stipulation Between Trustee and Reliance Communications, LLC for Allocation of Sale Proceeds* filed June 22, 2015 [Doc. #78] that the proceeds from the Property sale after payment of valid liens, if any, having priority over the Judicial Lien, sale costs and expenses approved by the Court, including fees of Trustee's counsel but not including Trustee compensation ("Net Sale Proceeds"), shall be divided on the basis of 60% to Reliance and 40% to Trustee for the benefit of the estate.

7. Trustee's counsel, Kegler Brown Hill & Ritter, has been awarded compensation of \$14,288.00 and reimbursement of expenses of \$594.88 incurred in the sale of the Property. After payment of these fees and expenses, Net Sale Proceeds remaining in the estate equal **\$63,216.57.**

8. Pursuant to the agreement of Trustee and Reliance set forth in the Stipulation, upon Court approval of this proposed compromise, Trustee intends to disburse to Reliance the sum of **\$37,929.94** in full payment of its claim allegedly secured by the Net Sale Proceeds.

Approval of Settlement

Generally, under Federal Rule of Bankruptcy Procedure Rule 9019, the Court should approve a proposed settlement upon its determination that the settlement is "fair and equitable." See *Nicole Energy Servs. Inc.*, 385 B.R. 201, 210 (Bankr. S.D. Ohio 2008) (citing *Bauer v.*

Commerce Union Bank, 859 F.2d 438, 441 (6th Cir. 1988)). To determine whether a compromise is fair-and-equitable, the Court should consider: "(1) the Debtor's probability of success if the litigation proceeds; (2) what difficulties may arise in the collection of any judgment; (3) the complexity, expense and delay that the parties will face; and (4) whether the proposed settlement satisfies the paramount interests of creditors and takes into account their views." Id. at 210 (citing *Fishell v. Soltow* (In re Fishell), 47 F.3d 1168 (table), 1995 WL 66622 at *3 (6th Cir. 1995)).

Examination of these factors demonstrates that Trustee's proposed compromise should be approved by this Court.

1. Probability of Success on the Merits

Trustee is uncertain that he would be able to prevail on the merits of the dispute with Reliance if the matter proceeds to litigation. There is precedent to support the claim that the Judicial Lien is subject to possible avoidance under provisions of 11 U.S.C. §522(f). However, this privilege is granted to the Debtor, not to the Trustee. Section 551 does provide that a transfer "avoided under Section 522" is preserved for the benefit of the estate. However, Trustee has been unable to locate any case law applying these two statutory provisions in tandem.

On the other hand, Reliance does have a validly perfected judgment lien which was an encumbrance on the Property. The amounts due Reliance is substantially in excess of the Net Sale Proceeds. Therefore, the potential result of litigation is an "all or nothing" result as to both litigants.

2. Difficulties in Collection

This compromise relates to the distribution of funds now in possession of the Trustee. This factor is therefore not relevant in this case.

3. Complexity Expense and Delay of Further Litigation

Neither Trustee nor Reliance has commenced any litigation over the disposition of the Net Sale Proceeds. A motion beginning a contested matter or an adversary proceeding would take at least six to eight months to resolve. An appeal by either litigant could delay resolution for up to an additional year.

The facts relating to the dispute are relatively simple and straight forward. However, the application of unsettled law to these facts may require complex analysis. Preparation and trial will require significant expense by both Trustee and Reliance. Resolution of the dispute will also require expenditure of substantial judicial resources.

Consideration of the complexity, expense, and delay of further litigation suggests that approval of the compromise is in the best interest of the estate.

4. Paramount Interest of Creditors

Trustee believes approval of the compromise on the terms set forth above is consistent with the paramount views and interest of the estate and its creditors. The proposed compromise will enhance the distribution for the estate and will expedite the closing of the chapter 7 case. Approval of the compromise will also reduce administrative expenses.

As explained above, litigation of the dispute will entail an effort in which expenses would significantly reduce the ultimate recovery of the estate. Moreover, it is a possibility that litigation of the dispute would result in judgment in favor of Reliance. In contrast, Trustee's proposed settlement guarantees a meaningful additional recovery for the estate and avoids the litigation risks facing the estate if the settlement is not approved. To date, Trustee has recovered approximately \$80,000.00 and has the sum of \$65,762.97 remaining on hand. Trustee expects to complete the sale of the property at 7135 Laver Lane, which sale may generate approximately

\$200,000.00 or more for the benefit of the estate. Trustee is investigating several other potential avoidance actions, but is unable to predict any ultimate recovery on those claims at this time. Over \$5,000,000.00 in alleged priority claims have been filed in this case. Unsecured non priority claims filed to date exceed \$3,000,000.00. Since it is unlikely that any dividend will be paid to unsecured creditors in this case, the amount of this settlement is not germane to the analysis of whether the compromise should be approved. However, all creditors will benefit from an expeditious conclusion of the case, which will be further by final resolution of this matter by way of settlement.

5. Conclusion

The proposed settlement between Trustee and Reliance is the product of substantial, arms' length negotiations between the parties. The terms are fair and equitable, and meet the standards for approval by the Court. Taking into account the Trustee's uncertain likelihood of success on the merits, the complexity, delay, and expense of further litigation, and the presumed interest of creditors, the proposed compromise is in the best interest of the estate and should be approved by this Court.

/s/Larry J. McClatchey
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Trustee and Attorney for Trustee

NOTICE AND CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that Larry J. McClatchey, Trustee filed an *Application to Approve Compromise* with the Court.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this Bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief requested, or if you want the court to consider your views on the application then on or before **twenty one (21) days from the date set forth in the certificate of service for the motion or objection** ("Response Date"), you must file with the court a response explaining your position by mailing your response by regular US Mail to the Clerk of the United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215 OR your attorney must file a response using the court's ECF System. If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the Response Date.

You must also mail a copy of your response on or before the Response Date by 1) the Court's ECF System or 2) by regular US Mail to Trustee's counsel, Larry J. McClatchey, Kegler Brown Hill & Ritter, 65 East State Street, Suite 1800, Columbus, Ohio 43215. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

CERTIFICATE OF SERVICE

This is to certify that on August 12, 2015, a copy of the foregoing *Application to Approve Compromise* was served electronically through the Court's ECF System at the email address registered with the Court:

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and on the following by ordinary US Mail addressed to:

SEE ATTACHED EXHIBIT A¹

/s/Larry J. McClatchey
Larry J. McClatchey

¹ Service is limited by the *Order Limiting Notice to Creditors Whose Claims are filed* [Doc. #59]

EXHIBIT A

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Department Of The Treasury
Internal Revenue Service
PO Box 7346
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Pennsylvania Department of Revenue
Bankruptcy Division
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Ohio Department of Taxation
Bankruptcy Division
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Columbus, OH 43216

Ohio Attorney General Collections
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Attn: Bankruptcy Unit
150 East Gay Street
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Wisconsin Department of Revenue
Special Procedures Unit
PO Box 8901
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